

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

STATE TREASURER,

Plaintiff,

vs.

Case No: 2005-4953-CZ

JOSEPH BERTIN, #443324
and MORGAN STANLEY
DEAN WITTER,

Defendant.

OPINION AND ORDER

This matter is before the Court on a Complaint and Order to Show Cause why defendant's assets should not be appropriated and applied to reimburse the State of Michigan for the cost of confinement in a state correctional facility pursuant to the State Correctional Facility Reimbursement Act ("SCFRA"), MCL 800.401, *et seq.* A telephonic hearing was held and both parties submitted briefs following that hearing.

Defendant was sentenced on April 7, 2005 by Hon. Richard L. Caretti, 2002-2546-FH and 2002-2547-FH, and is currently a state prisoner housed at the Pugsley Correctional Facility, Kingsley, MI. Plaintiff has submitted documentation, which indicates it anticipates spending \$79,520.00 for defendant's incarceration through March 9, 2009. Plaintiff filed this complaint on December 9, 2005 pursuant to MCL 800.401, *et seq.* Plaintiff, upon investigation, believes defendant has assets in an individual retirement account ("IRA"), other accounts with Morgan Stanley Dean Witter, and his prison account. Plaintiff requests an Order to be entered



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appropriating and applying defendant's assets toward reimbursing the State of Michigan for the cost of defendant's care.

Defendant argues that plaintiff filed this complaint without a full investigation and determination of a specific sum to recover, which is a violation of his due process rights. Defendant claims plaintiff failed to plead necessary and sufficient facts, including the specific amount authorized to collect, therefore the Court lacks jurisdiction. In addition, defendant contends the Employment Retirement Income Security Act ("ERISA") prohibits alienation and assignment of plan benefits. Defendant asserts his IRA is covered by ERISA because the funds consist of an employee pension plan and 401(k) plan. The U.S. District Court, defendant urges, has exclusive jurisdiction over ERISA matters; as a result, the Court does not have jurisdiction. Finally, defendant argues his prison account never exceeded \$1,500.00, therefore, no funds can be removed pursuant to a department of corrections policy directive.¹

Plaintiff responds that SCFRA does not require a full investigation or specific amount for this Court to have jurisdiction, but only good cause to believe defendant has assets to reimburse the State of Michigan. Plaintiff argues an IRA is not covered by ERISA since it is a self-settled account not sponsored by an employer. Further, plaintiff contends money can be removed from defendant's prisoner account because a department of corrections policy directive can not outweigh a statute.

The Court will begin its review with defendant's arguments under SCFRA. MCL 800.403 permits the attorney general to investigate and seek reimbursement if there is "good cause to believe that a prisoner has sufficient assets to recover not less than 10% of the estimated cost of care of the prisoner or 10% of the estimated cost of care of the prisoner for 2 years,

¹ On June 8, 2006 defendant filed a motion for dismissal, but upon review, defendant has essentially replied to plaintiff's response by expanding on his initial arguments in his show cause hearing brief.

whichever is less.” The circuit court has exclusive jurisdiction over all proceedings under SCFRA. MCL 800.404(1).

Here, defendant has failed to demonstrate plaintiff did not have “good cause to believe” he had sufficient assets to recover. SCFRA does not require plaintiff to plead a specific amount for recovery. Plaintiff asserted the type and location of assets possessed by defendant. Plaintiff has sufficiently investigated and demonstrated a good cause to believe defendant possesses assets to reimburse the State of Michigan for cost of care for defendant. Pursuant to MCL 800.404(1), the Court has jurisdiction over this matter.

Next, pension plan benefits under ERISA may not be assigned or alienated. 29 USC §1056(d)(1). IRAs are specifically not covered by ERISA. 29 USC §1003(c); 29 USC §1051(6). In the present matter, defendant’s IRA is not regulated by ERISA and may be assigned pursuant to SCFRA. Moreover, the Court notes defendant produced no documentation of his assets to substantiate his claim that the contents are an employee pension plan and 401(k). Defendant is required to show cause why his assets should not be awarded to the State under SCFRA and has failed to do so or to support his argument.

Finally, the Court will consider defendant’s argument concerning his prisoner account. A department of corrections policy directive is invalid to the extent that it modifies, extends, or conflicts with a statute. *Lickfeldt v Department of Corrections*, 247 Mich App 299, 305; 636 NW2d 272 (2001). Here, any policy directive that would prohibit the assignment of funds under SCFRA would be invalid.

For the reasons set forth above, defendant has failed to show cause why his assets should not be awarded to the State of Michigan under SCFRA. It is ordered that 90% of defendant’s assets be paid to the State of Michigan as partial reimbursement for expenses incurred for his

incarceration. This amount is not to exceed the actual costs of incarceration (\$79,520). Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and closes the case.

IT IS SO ORDERED.

Diane M. Druzinski , Circuit Court Judge

Date:

JUL - 5 2006

DMD/aac

cc: Victoria Reardon, Asst Attorney General
Defendant In Pro Per
Pugsley Correctional Facility
7401 East Walton
Kinglsey, MI 40649

DIANE M. DRUZINSKI
CIRCUIT JUDGE

JUL - 5 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: *[Signature]* COURT CLERK